RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900533 SEPARATION DATE: 20080108

BOARD DATE: 20110315

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a USMCR LCpl (5811, Military Policeman) medically separated from the Marine Corps Reserve in January 2008 after six years of combined service. The medical basis for separation was postttraumatic stress disorder (PTSD). He was diagnosed with PTSD after an Iraq deployment in 2004 where he provided flight-line and convoy security. Upon return from deployment, he began a civilian career as a policeman, but struggled with PTSD symptoms. Criterion A combat stressors were documented and the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) criteria for an Axis I diagnosis of PTSD were met. He responded well to medication and outpatient psychotherapy, but not adequately to perform within his military occupational specialty. The CI was referred to a Medical Evaluation Board (MEB). PTSD and major depressive disorder (MDD) were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. The PEB adjudicated the PTSD as unfitting, rated 10% IAW the Veterans Administration Schedule for Rating Disabilities (VASRD). The MDD was found to be Category II (a related condition that contributes to the unfitting condition). The CI made no appeals, and was medically separated with a 10% disability rating.

CI’s CONTENTION: The CI elaborates no specific contentions regarding rating or coding, and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Navy PEB – dated 20071221** | **VA (11 mo. after Separation) – All Effective 20080602** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD | 9411 | 10% | PTSD | 9411 | 50% | 20081126 |
| Major Depressive Disorder | Not unfitting | No corresponding VA entry  |
|  | 1 x Not Service Connected  | 20080620 |
| **TOTAL Combined: 10%** | **TOTAL Combined: 50%** |

ANALYSIS SUMMARY:

Posttraumatic Stress Disorder. The December 2007 PEB rating, as described above, was derived from VASRD but preceded the promulgation of the National Defense Authorization Act (NDAA) 2008 mandate for Department of Defense (DoD) adherence to VASRD §4.129. IAW DoDI 6040.44 and DoD guidance (which applies current VASRD 4.129 to all Board PTSD cases), the Board is obligated to recommend a minimum 50% PTSD rating for a retroactive six-month period on the Temporary Disability Retired List (TDRL). The Board must then determine the most appropriate fit with VASRD 4.130 criteria at six months for its permanent rating recommendation. The most proximate sources of evidence on which to base the permanent rating recommendation in this case are the MEB itself and the VA compensation and pension (C&P) examination performed 11 months after separation. There was no relevant clinical evidence providing psychiatric details during the six-month interval. For purposes of the permanent rating recommendation, it was judged that both of these examinations carried significant probative value. The VA C&P exam was closer to the six-month rating benchmark, and reflects the stress of transition to civilian life which is a core intent of §4.129 and thus intrinsic to the recommendation. The MEB evaluation also serves as an important reference point, especially considering that, while the CI was not yet fully a civilian, he had not been engaging in any military duties for nearly a year, and to a large degree could be considered to have already experienced transitional stress prior to discharge, consistent with the intent of §4.129 to reassess PTSD six months post-separation.

At the time of the MEB exam on 12 December 2007, the CI’s symptoms could best be described as mild. Following return from deployment, he applied to the Boston Police Department and attended the Police Academy, where he struggled due to inability to concentrate. At the same time, his marriage became strained due to his irritability and anger. Over the next two years, he continued to attend weekend Reserve drill, but developed interpersonal problems with the command and active duty personnel at the unit. He began experiencing panic symptoms prior to drill weekends, and increased anger and rage following drill weekends. The commander’s assessment stated that the CI’s fragile mental state precluded him from satisfactorily performing his assigned duties. Other symptoms included withdrawing from family and friends, withdrawing from life, decreased interest, guilt and anhedonia. He denied any use or abuse of drugs or alcohol. Eventually, he became involved in a physical altercation that prompted him to seek help at the VA one year prior to separation. He was diagnosed with PTSD and depression, started on psychotropic medications and outpatient counseling, and was also given a note which relieved him from attending drill weekends. Over the course of the next three months, he improved fairly rapidly with respect to mood, anger, and being less aroused. At the time of the MEB, he still struggled with anxiety, nausea, and physiologic arousal when around military uniforms, but had significantly improved. He still had nightmares about once per week, but had been sleeping fairly well with medication. He had not had a rage outburst in the past six months, and his marital relationship had improved significantly. He had maintained his ability to do his civilian occupation as a motorcycle policeman, which he loves. On mental status exam (MSE) he had a euthymic mood with full and congruent affect, but became tearful and somewhat distraught when discussing his nightmares and the details of events that occurred in Iraq. The exam was otherwise normal. The examiner opined that, “His significant use of avoidance has allowed him to function in, and adapt to, a civilian environment. Even small exposure to the military significantly exacerbates his symptoms, limiting his capacity to manage the unique stressors of routine military service.”

At the VA compensation and pension (C&P) exam (11 months after separation), the CI reported that he experienced flashbacks of Iraq with brief dissociation once or twice per month, and feelings of distress in response to reminders of military events once or twice per week. He also had symptoms of sleep disturbance and hyper-arousal. There were tensions with both his and his wife’s families, and some financial tensions at home. Contrary to the history recorded at the MEB, the CI reported excessive drinking when he returned from Iraq, but only infrequent alcohol use currently. The CI’s PTSD symptoms had not affected his employment functioning. He was still working in the Boston Police Department (motorcycle unit) and reported that he could cope with his job satisfactorily. He reported working long hours and did not socialize. On MSE, the CI was anxious and displayed dissociative behavior during the examination. Thought processes and content were normal. There were no suicidal or homicidal ideations or psychotic features. The examining psychologist assigned a global assessment of functioning score of 55, connoting moderate symptoms or moderate difficulty in social or occupational functioning.

The Board directed its attention to its rating recommendations based on the evidence just described. All members agreed that the §4.130 criteria for a rating higher than 50% were not met at the time of separation, and therefore the minimum 50% TDRL rating (as explained above) is applicable. Regarding the permanent rating recommendation, all members agreed that the §4.130 threshold for a 50% rating was not approached and that the criteria for a 0% rating were exceeded. The VA rating decision assigned a 50% rating based on §4.130 criteria, without application of §4.129, but the Board saw nothing in the evidence that suggests the “occupational and social impairment with reduced reliability and productivity” required for that rating. The MEB examination was most consistent with the general description for a §4.130 rating of 10%, “occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress or symptoms controlled by continuous medication.” The Board considered that the CI had been excused from all military duties and had fully integrated into civilian life for nearly a year prior to separation, thus experiencing most or all of the transitional stresses for which §4.129 is designed to account. The Board also considered that, while the PTSD symptoms reported by the VA examiner 11 months after separation are somewhat worse than those reported at the MEB, the CI’s social and occupational function showed not further impairment. After due deliberation and in consideration of all the evidence and reasonable doubt, the Board recommends 10% as the fair permanent separation rating for PTSD in this case.

Other PEB Conditions. The other condition forwarded by the MEB and adjudicated by the PEB was MDD. This condition is fully subsumed in the §4.130 rating for PTSD as above. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for this condition.

Remaining Conditions. Several additional non-acute conditions or medical complaints were documented in the Disability Evaluation System file. None of these conditions were clinically active during the MEB period, carried attached profiles, or were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. No other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or Military Department regulations or guidelines relied upon by the PEB will not be considered by the Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the PTSD condition, the Board unanimously recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DOD directed, and a 10% permanent rating at six months IAW VASRD §4.130. In the matter of the MDD, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

RECOMMENDATION: The Board recommends that the CI’s prior separation be modified to reflect that the CI was placed on the TDRL at 50% for a period of six months (PTSD at 50% IAW §4.129 and DoD direction) and then permanently separated by reason of physical disability with a final 10% rating as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT****RATING** |
| Postttraumatic Stress Disorder | 9411 | 50% | 10% |
| **COMBINED** | **50%** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090901, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

Ref: (a) DoDI 6040.44

1. I have reviewed the subject case pursuant to reference (a). The subject member’s official records are to be corrected to reflect the following retroactive disposition:

 a. Separation from the naval service due to physical disability with placement on the Temporary Disability Retired List with a disability rating of 50 percent for the period 10 January 2008 thru 9 July 2008.

 b. Final separation from naval service due to physical disability effective 10 July 2008 with a disability rating of 10 percent with entitlement to disability severance pay.

2. Please ensure all necessary actions are taken to implement this decision, including the recoupment of previously paid funds if appropriate, and notification to the subject member once those actions are completed.

 Assistant General Counsel

 (Manpower & Reserve Affairs)